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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,970	07/16/1999	JOHN R. DOUCEUR	1610	5820

7590

06/25/2004

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EXAMINER

NGUYEN, DUSTIN

ART UNIT

PAPER NUMBER

2154

DATE MAILED: 06/25/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

SL

Office Action Summary

Application No.

09/354,970

Applicant(s)

DOUCEUR ET AL.

Examiner

Dustin Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-39 is/are allowed.
- 6) ☒ Claim(s) 1,2,10,14-23,27-31 and 40-44 is/are rejected.
- 7) ☒ Claim(s) 3-9,11-13 and 24-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. Claims 1 – 44 are presented for the examination.

Allowable Subject Matter

2. Claims 3-9, 11-13, 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

3. Applicant's arguments filed 04/15/2004 have been fully considered but they are not persuasive.
4. As per remarks, Applicants' argued that (1) claim 1 recites receiving data indicative of a measured progress of the background task relative to past performance data of the background task, that is, this embodiment of the present invention uses a statistical analysis of the measured progress of the background task relative to its own past performance data.
5. As to point (1), in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., statistical analysis and its own past performance data or same back ground task) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations

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from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. As per remarks, Applicants' argued that (2) the measure progress of Hales is not measured as amount of work performed per unit time as recited in claim 14.

7. As to point (2), it is rejected for same reasons as stated in previous Office Action. Furthermore, Hales discloses amount of work performed per unit time [col 9, lines 8-11].

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 2, 10, 14-17, 19-23, 27-31, 40-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Hales, II et al. [US Patent No 5,938,723].

10. As per claim 1, Hales discloses the invention substantially as claimed including a computer-readable medium having computer-executable instructions, comprising:

executing a background task [col 11, lines 62-66],

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receiving data from a software component indicative of a measured progress of the background task relative to the past performance data [col 11, lines 29-38; and col 12, lines 1-3],

and determining when to again execute the background task based on the data [Figure 8a-c; and col 10, lines 54-67].

11. As per claim 2, Hales discloses
suspending the background task for a suspend time [col 11, lines 29-34],
and authorizing the background task to again execute [col 6, lines 8-15].
12. As per claim 10, Hales discloses determining a suspend time for suspending the background task [col 12, lines 36-54], and wherein the suspend time is further based on a relative importance of the task [col 2, lines 56-67].
13. As per claim 14, Hales discloses the measured progress comprises an amount of work performed per unit time [col 11, lines 4-6].
14. As per claim 15, Hales discloses the background task is executed for a limited time [col 12, lines 23-25], and the data include a count of the operations performed during the limited time [Abstract].

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15. As per claim 16, Hales discloses the data includes total real time taken for the operations to complete [col 17, lines 9-12].

16. As per claim 17, Hales discloses a parameter representing the relative amount of work performed by each operation [col 11, lines 33-36].

17. As per claim 19, Hales discloses the background task performs input/output operations on a resource [col 3, lines 54-col 4, lines 16].

18. As per claim 20, Hales discloses prioritizing an execution of at least one other task [col 15, lines 66-col 16, lines 8].

19. As per claim 21, it is rejected for similar reasons as stated above in claim 1.

20. As per claims 22, 23, 27-29, they are rejected for similar reasons as stated above in claims 10, 15-17.

21. As per claims 30, 31, they are rejected for similar reasons as stated above in claims 19, 20.

22. As per claims 40 and 41, Hales discloses receiving an indication of acceptable performance and unacceptable performance [col 12, lines 57-col 13, lines 6]

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23. As per claims 42 and 43, they are rejected for similar reasons as stated above in claims 40, 41.

24. As per claim 44, Hales discloses an indication of more information being needed [col 11, lines 1-9].

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hales, II et al. [US Patent No 5,938,723], in view of Thompson et al. [US Patent No 5,822,584].

27. As per claim 18, Hales does not specifically disclose the background task is part of a process for recognizing duplicate files on a file system partition, and wherein the amount of work performed by each operation is an amount of data read from the partition. Thompson discloses the background task is part of a process for recognizing duplicate files on a file system partition, and wherein the amount of work performed by each operation is an amount of data read from the partition [col 1, lines 26-53]. It would have been obvious to a person skill in the art at the time

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the invention was made to combine the teaching of Hales and Thompson because Thompson's teaching would allow to keep information up to date for data consistency.

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on Monday – Friday (8:00 – 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directly to the receptionist whose telephone number is (703) 305-3900.

Dustin Nguyen

 **JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**